FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.30 OF 2006
IN
REVISION APPLICATION NO.63 OF 2006

Rajesh Kumar Ramkaran Mishra ..Applicant
V/s.
The State of Maharashtra ..Respondent

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

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Mr.O.P.Pandey i/by M/s.Pandey & Co. for the applicant.

Mr.A.S.Shitole, APP for the State.

Coram : R.S.Mohite,J

Date : 20.02.2006.

PC

1. Heard. Rule. By consent, rule made returnable forthwith.

2. I have perused the appellate order passed by the Additional Sessions Judge, Brihan Mumbai on 16.1.2006. The appeal before him was against the conviction under Sections 279 r/w 337 & 304 of IPC. From the brief appellate Court's judgment, I find that there is no finding that the accused was

driving the vehicle rashly or negligently or was responsible for committing a rash and negligent act. This is the basic ingredient of the sections under which the present applicant is convicted. The appeal Court is the last Court of fact and it is desirable that atleast the ingredients of sections are held to be proved on the basis of evidence. It is not enough to hold that the happening of the accident was established. The accident should be attributed to a rash and negligent act on the part of the accused which is the essential ingredient of the offences for which the applicant was convicted. In my view, a proper judgment would be required to be passed taking into account the evidence on record and dealing with the question as to whether the applicant was guilty of rash and negligent act. In the circumstances, revision is allowed and the judgment and order passed by the Additional Sessions Judge, Brihan Mumbai, on 16.1.2006 in

Appeal No.678/2005 is quashed and set aside and the matter is remanded back to the Sessions Court for fresh consideration and judgment in accordance with law. Rule made absolute in the aforesaid terms.

3. I am informed that the applicant was on bail pending the appeal. In the circumstances, pending the hearing and final disposal of the appeal, the applicant may be released on the same bail as in the appellate Court subject to his furnishing fresh bond.

(R.S.Mohite,J)